

Another Pair of Eyes and a Fresh Look

Why You Should Focus and Refocus
on Safety and Health Compliance

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“There will be six designated yawning breaks during my presentation. Please pace your boredom accordingly.”

OSHA

- Occupational Safety and Health Administration
- Occupational Safety and Health Act of 1970 (“OSH Act”)
 - Goal: “...To assure so far as possible every working man and woman in the Nation safe and healthful working conditions...”
- Even one single employee subjects employers to the OSH Act

OSHA (...cont.)

- In most states, like Georgia, OSHA is the primary enforcement authority for employers and their employees. In other states OSHA delegates its authority to the State (example: Tennessee = TOSHA). OSHA audits these state programs regularly.



What is TOSHA?

- TOSHA: Tennessee Occupational Safety and Health Administration
- In Tennessee, Federal OSHA works indirectly through TOSHA
- TOSHA's procedures for identifying worksite violations are substantially identical to OSHA's — Some procedural differences, too — 15 work-days (Federal) vs. 20 calendar days



“CULTURE” is Everything

Survey of Most Common Excuses

“Too many rules” and too much training.





**"The safety guys are
***holes and bullies."**



**"EHS compliance makes everything
more difficult and time-consuming."**





**"Why do we have to do this
training every year?"**







**Safety makes it "more
difficult to do my job."**



**"It takes too much
time!"**















Reactive v. Proactive



The Reactive Approach



The Reactive Approach (...cont.)

- “Wait and See”
- Failure to create and enforce employee health and safety program
- Failure to conduct routine scheduled inspections
- Failure to conduct appropriate employee training
 - Monthly training
 - Daily “Tool Box” talks
- Failure to utilize an outside consultant to assure a “fresh” look/perspective
- Even companies that employ safety managers can miss important details!



The Costs of Being Reactive (...cont.)

- A national chain pharmacy/drug store in New York was recently cited for one willful safety violation.
- The store was cited for blocking an emergency exit.
- This single, willful violation carried a proposed fine of **\$60,500.**

The Costs of Being Reactive (...cont.)

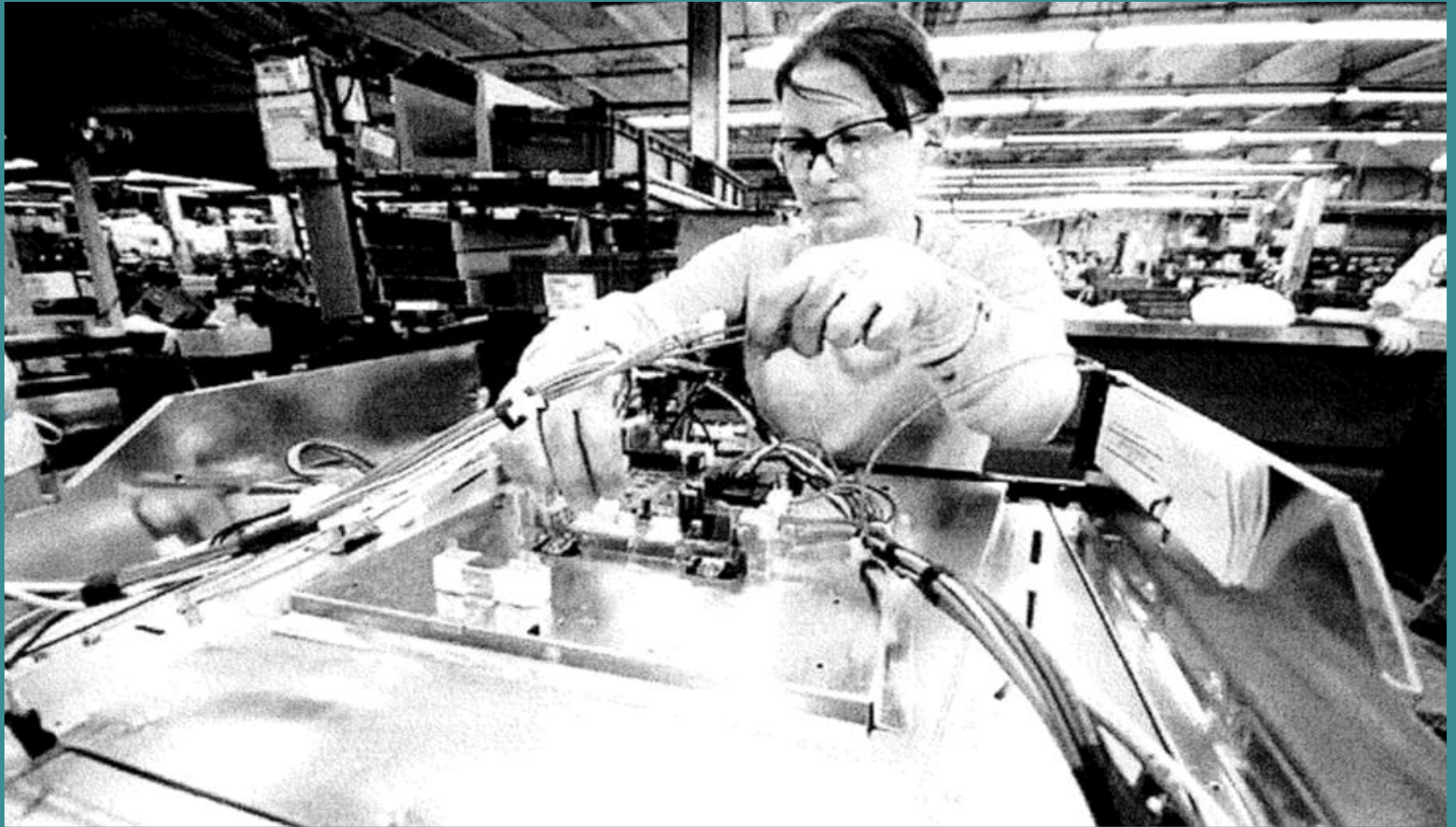
- In Chattanooga, TOSHA issued 6 citations to a subcontractor at a construction jobsite.
 - Workers were not properly trained = **\$1,000**
 - No safe way to enter and exit the excavation = **\$1,500**
 - Employees exposed to hazardous areas without proper precautions in place = **\$6,000**
 - Excavation was not properly trenched/protected = **\$4,500**

Total amount of fines= **\$13,000**



A man relaxes during his lunch break on a steel beam atop the RCA Building at Rockefeller Center, New York, September 1932

The Proactive Approach



The Proactive Approach (...cont.)



- Creating and enforcing a health and safety plan
- Conducting routine compliance inspections
- Seeking professional guidance/fresh perspectives
- Developing and implementing training programs
- Proposing solutions and implementing them in a timely manner
- Routine follow up on implemented plans
- Documenting training, inspections, program attendance compliance

The Benefits of Being Proactive

- A healthy and safe workforce is productive
- Gain a competitive advantage
- Compliance
- Avoid fines for non-compliance
- Avoid legal costs from injury suits
- Avoid legal costs from post-violation enforcement matters

The Benefits of Being Proactive (...cont.)

- Less lost time due to injuries
- Lower Workers Compensation premiums
- Lower experience modifier
- Quality control
- Drug-free workplace
- Financial institutions evaluate borrowers by their history of fines, penalties, and violations (credit risk)

Financial Institutions customarily evaluate their borrowers based on historical benchmarks and documentation such as:

- Financial Statements and Related Footnotes
- Appraisals
- Environmental Site Assessments
- Business Plans

The health and safety behavior and compliance record of a borrower is an additional and important metric, which lenders frequently overlook.

Lenders should pay close and careful attention to the housekeeping, history of fines, penalties and inspections and injury/illness history of existing and potential borrowers.

A borrower who demonstrates “good behavior” can be a substantially safer credit risk than a borrower with a poor health and safety track record.

Can You Spot the Safety Hazard?



Can You Spot the Safety Hazard?



Gravedigger Partially Buried at Long Island Cemetery



OSHA Federal Penalty Schedule

OSHA citations inform the employer and employees of the regulations and standards alleged to have been violated, and of the proposed length of time set to correct alleged hazards. The employer receives citations and notices of proposed penalties by certified mail. The employer must post a copy of each citation at or near the place a violation occurred for 3 days or until the violation is abated, whichever is longer.

These are the types of violations that may be cited and the penalties that may be proposed:

Other-Than-Serious Violation	Minimum: \$0 Maximum: \$1,000
Serious Violation	Minimum: \$1,500 Maximum: \$7,000
Willful Violation	Minimum: \$5,000 Maximum: \$70,000
Willful Violation (results in death)	Individuals: \$250,000 + 6 months jail Corporation: \$500,000 + 6 months jail
Willful Violation – Egregious Multiplier	Willful penalties are applied on a violation-by violation basis or employee by employee exposure.
Repeat Violation	Maximum: \$70,000
Failure-to-Abate	Up to \$7,000 a day for each day violation continues beyond abatement date
Falsifying records or making false statements	\$10,000 fine or up to 6 months jail or both
Violating Posting Requirements (failure to post OSHA poster, OSHA 300 Annual summary, citations, etc)	Maximum: \$7,000
Failure to report fatality/catastrophic event within 8 Hours	Minimum: \$5,000
Providing advance notice of inspection	\$1,000 fine or up to 6 months jail or both

OSHA Federal Penalty Schedule (...cont.)

- **Other-Than-Serious Violation** — A violation that has a direct relationship to job safety and health, but probably would not cause death or serious physical harm. OSHA may assess a penalty from \$0 to \$1,000 for each violation. The agency may adjust a penalty for an Other-Than-Serious violation downward by as much as 95 percent, depending on the employer's good faith (demonstrated efforts to comply with the Act), history of previous violations, and size of business.
- **Serious Violation** -- A violation where there is a substantial probability that death or serious physical harm could result. OSHA assesses the penalty for a serious violation from \$1,500 to \$7,000 depending on the gravity of the violation. OSHA may adjust a penalty for a serious violation downward based on the employer's good faith, history of previous violations, and size of business.
- **Willful Violation** -- A violation that the employer intentionally and knowingly commits. The employer is aware that a hazardous condition exists, knows that the condition violates a standard or other obligation of the Act, and makes no reasonable effort to eliminate it. OSHA may propose penalties of up to \$70,000 for each willful violation. The minimum willful penalty is \$5,000. When a willful violation is deemed to be 'egregious' than OSHA can apply willful violation limits for every violation found or for every employee exposed to hazards.
- An employer and responsible management individuals convicted in a criminal proceeding of a willful violation of a standard that has resulted in the death of an employee may be fined up to \$250,000 for individuals or \$500,000 for a corporation or imprisoned up to 6 months, or both. A second conviction doubles the possible term of imprisonment.
- **Repeated Violation** -- A violation of any standard, regulation, rule, or order where, on reinspection, a substantially similar violation is found and the original citation has become a final order. Violations can bring a fine or up to \$70,000 for each such violation within the previous 3 years. To calculate repeated violations, OSHA adjusts the initial penalty for the size and then multiplies by a factor of 2, 5, or 10 depending on the size of the business.
- **Failure-to-Abate** -- Failure to correct a prior violation may bring a civil penalty of up to \$7,000 for each day that the violation continues beyond the prescribed abatement date.

Company With Less Than 100 Employees Fined \$1.9 Million

CITED 77 TIMES IN 4 YEARS!

SAFETY AND HEALTH COMPLIANCE MANAGEMENT

OSHA

Occupational Safety & Health Administration
U.S. Department of Labor



News Release

U.S. Department of Labor

Release Number: 11-788-ATL

June 14, 2011

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US Labor Department's OSHA proposes more than \$1.9 million in fines against Alabama lumber mill for egregious and other safety violations

PHENIX CITY, Ala. – The U.S. Department of Labor's Occupational Safety and Health Administration today proposed penalties of \$1,939,000 to the Phenix Lumber Co. and its principal, John M. Dudley, for egregious and other safety violations, including exposing employees to amputation and fall hazards.

Prior to these citations, Phenix Lumber had been cited 77 times by OSHA for serious safety and health violations since 2007.

"Phenix Lumber continues to put workers at risk by choosing not to implement safety measures that would prevent serious injuries to their employees," said Secretary of Labor Hilda L. Solis. "Employers have a responsibility to keep their workers safe and healthy. One worker injured on the job is one too many."

OSHA began an inspection on Dec. 15, 2010, in response to a complaint that employees working in the planer mill were exposed to amputation hazards while maintaining, cleaning and clearing jams on pieces of machinery that did not have their energy sources locked out to prevent their unexpected start up. Two months later, OSHA received a second complaint that an employee had suffered a partial finger amputation while clearing a piece of machinery that had not been locked out. At the opening of an inspection following the second complaint, the compliance officer learned of another employee who had just suffered a severe hand injury while working on unguarded machinery. Phenix Lumber had been cited numerous times during the past four years for allowing employees to work on unguarded machinery while it was operating.

"This situation reflects a systemic problem with the way this company approaches safety

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SAFETY AND HEALTH COMPLIANCE MANAGEMENT

and demonstrates an egregious disregard for workers' safety and health," said Assistant Secretary of Labor for OSHA Dr. David Michaels.

OSHA has issued Phenix Lumber 13 citations for 24 willful violations, including failure to properly shut down and lock out 13 pieces of machinery before employees were required to perform tasks such as clearing jams and cleaning. These failures exposed employees to amputation hazards, as well as to the possibility of being caught between or struck by pieces of the machinery and falling lumber. The employer also failed to train 11 employees who performed this work on the hazards and how to shut down and lock out the machinery so that they could perform their tasks safely. OSHA proposed the maximum \$70,000 penalty for each violation, totaling \$1,680,000.

Citations for three additional willful violations allege that a worker was exposed to fall hazards while working from the top of a machine, locks were not issued to employees as required by the lockout standard, and the company failed to follow established lockout/tagout procedures. These citations carry additional penalties of \$70,000 each, for a total of \$210,000.

A willful violation is one committed with intentional knowing or voluntary disregard for the law's requirements, or with plain indifference to worker safety and health. OSHA may propose separate penalties for distinct willful violations of the same OSHA standard where one or more of the seven criteria are met as identified in the OSHA directive "Handling of Cases to be Proposed for Violation-By-Violation" (compliance directive 02-00-080). The criteria include that the employer's conduct taken as a whole amounts to clear bad faith in the performance of duties under the Occupational Safety and Health Act.

One citation for a repeat violation with a \$35,000 fine was issued for failing to place machine guards on seven chains and sprockets. A violation is "repeated" if the employer previously was cited for a substantially similar condition, and the citation is a final, affirmed order of the independent Occupational Safety and Health Review Commission. This time is the third within three years that Phenix Lumber has been cited for failing to guard this type of equipment.

Citations for two serious violations, each with a maximum proposed penalty of \$7,000, were issued for failing to guard a pinch point at a hydraulic pusher plate, which exposed employees to amputation hazards and caused one of the injuries; and to ensure that employees performing lockout/tagout tasks applied and removed their own locks. A serious violation occurs when there is substantial probability that death or serious physical harm could result from a hazard about which the employer knew or should have known.

Copies of the citations are available at
<http://www.osha.gov/dep/citations/MDLGPphenixlumber315135954.pdf>* and
<http://www.osha.gov/dep/citations/MDLGPphenixlumber315111930.pdf>*.

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SAFETY AND HEALTH COMPLIANCE MANAGEMENT

OSHA has proposed that the employer be included in the agency's Severe Violators Enforcement Program. Initiated in 2010, the program is intended to focus on employers that endanger workers by committing willful, repeat or failure-to-abate violations in one or more of the following circumstances: a fatality or catastrophe; industry operations or processes that expose workers to severe occupational hazards; exposure to hazards related to the potential releases of highly hazardous chemicals; and all instance-by-instance enforcement actions under compliance directive 02-00-080. Inclusion in the program subjects employers to mandatory follow-up inspections; increased company/corporate awareness of OSHA enforcement; and, where appropriate, corporate-wide agreements, enhanced settlement provisions and federal court enforcement under Section 11(b) of the OSH Act.

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Who is Covered Under OSHA?

...It just takes one employee.

- All employers and employees in the 50 states, District of Columbia, Puerto Rico, and U.S. territories **except**:
 - Self-Employed Persons
 - Farms at which only immediate members of the farmer's family are employed
 - Working conditions regulated by other federal agencies under other federal statutes



Who is Covered Under TOSHA?

- All private and public-sector employees in Tennessee **except:**
 - Railroad Employees
 - Federal Employees
 - Maritime Employees
 - Private Contractors working at Government owned/operated facilities
 - TVA Employees and Contractors operating on TVA sites
 - US Postal Service Employees



Increasing Fines and Penalties

- OSHA fines are increasing and violations stay on employer's record for longer (3 years v. 5 years)
- TOSHA conducted 1,808 compliance inspections during the 2014 fiscal year and issued **6,852** citations
- Last year, Tennessee regulators imposed **\$2.6 million** in penalties

Increasing Fines and Penalties

- For the first time since 1990, OSHA is significantly increasing the amount of its fines.
- The Bipartisan Budget Act of 2015 contains a “catch-up” adjustment.
- The effect of this adjustment is simple: Penalties and caps are likely to nearly double in 2016 and continue to increase year-over-year thereafter.

Employers Beware: OSHA Fines Are on the Rise for the First Time in Twenty-Five Years

- The Bipartisan Budget Act of 2015, signed by President Obama on November 2, 2015, contains a provision requiring OSHA to significantly increase its civil penalties. A one-time “Catch Up Adjustment” will be based on the percentage difference between the Consumer Price Index in October 2015 and October 1990 – resulting in a penalty increase of approximately 80%. The \$7,000 cap on serious violations will increase to \$12,400 and the \$70,000 limit on willful and repeat violations will increase to \$124,000. Had OSHA applied this increase to fiscal year 2014 penalties, which totaled \$143.6 million, the total would have jumped to \$258.5 million. After this initial adjustment is made, OSHA will be required to adjust penalties every year using the annual percentage increase in the Consumer Price Index.

Total Case Incidence Rates (TCIR)

- The TCIR of nonfatal occupational injuries and illnesses for Tennessee private industry fell from 3.3 in 2013 to 3.2 in 2014.
- There was a similar decline in all industries including state and local government where the incidence rate fell from 3.4 in 2013 to 3.3 in 2014.
- Incidence rates in manufacturing decreased from 4.1 in 2013, to 3.8 in 2014.
- Incidence rates in construction increased from 3.2 in 2013 to 3.9 in 2014, but the Days Away Restricted Time (DART) rate fell from 2.0 to 1.7.

TOSHA's Consultative Services

- Free service
- In 2014, TOSHA completed 414 consultative visits and discovered **3,375** hazards
- No fines, penalties, or citations were issued



TOSHA's Consultative Services

- TOSHA offers a consultative service to employers who wish to improve their workplace safety and health.
- TOSHA's Consultative Section provides a confidential service without fees, out-of-pocket expense, or penalty/citation to employers. All that is required of TOSHA Consultation participants is that employers agree to correct any violations identified.
- Consultation is geared towards smaller employers, those with 250 or fewer employees on-site and 500 or fewer employees corporate wide in the U.S.

TOSHA's Consultative Services (...cont.)

- Once a Consultation visit is requested, TOSHA's consultants will make contact to schedule a convenient time for an on-site visit. During the on-site visit the consultant will provide examples and guidance of how to correct, prevent, and reduce hazards. Examples of written programs and information on developing and improving workplace training can also be provided.

TOSHA's Consultative Services (...cont.)

- The consultant will provide a formal written report of their findings. The findings of the report are confidential and not shared with or provided to TOSHA enforcement.
- Industrial hygiene services, including air contaminant and noise sampling are also available at no direct cost to the employer.

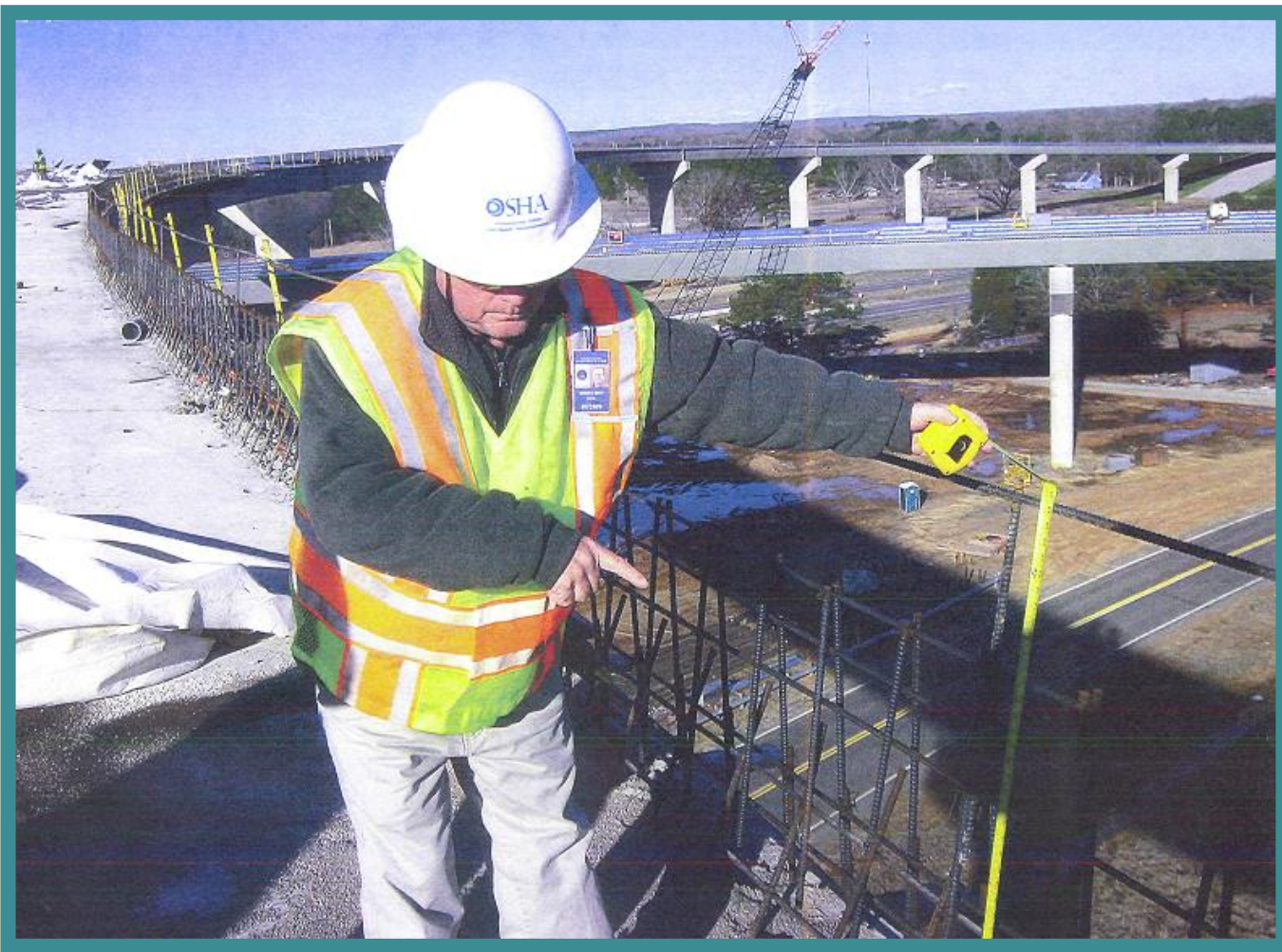
How Far Does OSHA's Reach Extend?

OSHA Investigating the Death of an Exotic Dancer in Cleveland, Ohio

OSHA investigated the death of an exotic dancer who died after tumbling over a second-floor railing and falling 15 feet while working at a strip club in Cleveland.

Employee vs. Independent Contractor – OSHA Jurisdiction

A REAL-LIFE EXAMPLE



WORKPLACE CRISIS MANAGEMENT

Anatomy of an OSHA Investigation

- A crew is working 100 feet in the air on an interstate highway bridge construction project when two members of the 25-person crew fall to the ground and die on impact.
- The remaining crew members are traumatized and now in a dangerous location. A call goes out to 9-1-1 as crew members rush to the aid of their coworkers only to realize that they have perished.
- Paramedics and police arrive on the scene. Crime scene tape is placed around the construction area and around the impact area 100 feet below. Detectives arrive as paramedics try to revive the two deceased workers. The area is immediately determined to be a crime scene and a homicide investigation is opened.

Anatomy of an OSHA Investigation (...cont.)

- The employer complies with its 8-hour notification obligation to OSHA and calls to report the fatalities. Detectives are already interviewing workers and an OSHA investigation team of two investigators arrives and begins informal employee interviews, photographing the scene and making notes.
- The employer's job site supervisor contacts corporate headquarters and advises that two investigations are under way. Management shows up only to receive requests from OSHA for OSHA 300 logs, safety assessments and job site safety plans, written safety programs covering multiple topics, such as fall protection, general safety, lock-out tag-out, equipment inspection, blood borne pathogens, first aid, etc. The employer is also asked to turn over equipment records, equipment owner's manuals, equipment maintenance logs, safety assessments and more. The employer has no idea what or how much of this it is obligated by law to provide.

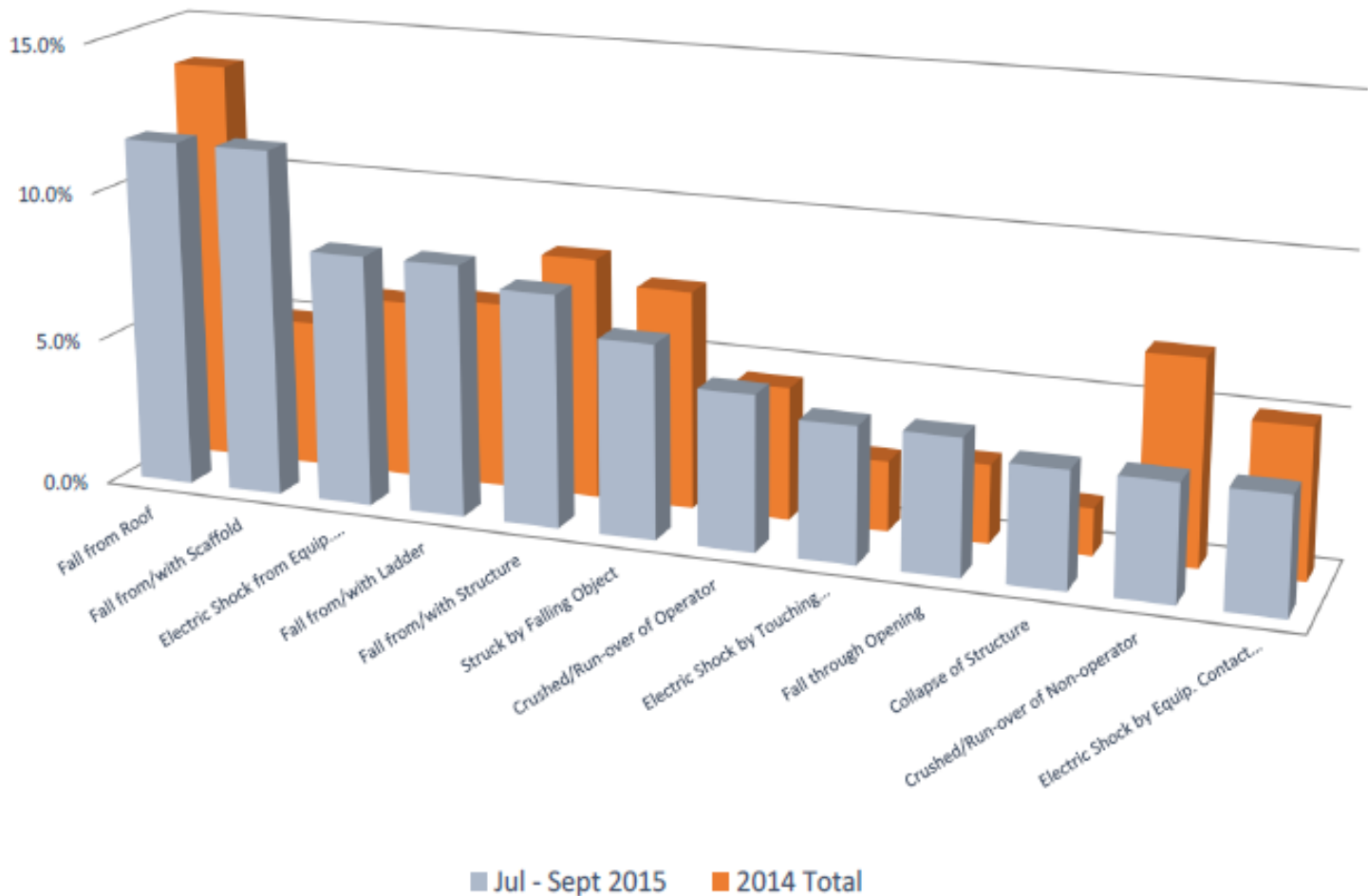
Anatomy of an OSHA Investigation (...cont.)

- Coworkers on the scene call family members of the two victims. Family members rush to the scene and hysterically try to gain access. Their overwhelming grief adds to the confusion as they are denied access but are close enough to see the bodies of their loved ones concealed by two white sheets.
- The press has also shown up and there are newspaper reporters, television reporters with video cameras running and live remote trucks recording and broadcasting the entire situation.
- Now, OSHA commences an opening conference with the employer and demands to interview hourly and managerial employees. The employer has no idea how to manage this process.

Anatomy of an OSHA Investigation (...cont.)

- In the meantime, the families of the deceased workers have been approached by personal injury attorneys who have also, at this point, come to the scene to perform their own uncontrolled investigation.
- The employer's insurance company has dispatched loss control and claims adjusting personnel to the scene.
- The victims' personal injury attorneys are quickly hired and are now demanding to inspect and take possession of certain evidence at the scene. An argument over custody of evidence ensues among the employer, law enforcement, OSHA, the insurance company, the plaintiffs' lawyers and the families of the victims. Petitions for injunctive protection are filed in State Court.
- Your job is to manage the events listed above as they occur simultaneously and in real time. ...Questions???

Top Fatal Construction Events by Percent Distribution (July to September 2015 and 2014 Total)



How OSHA Can Initiate an Inspection

There are four (4) scenarios where OSHA can implement an inspection of an employer's premises or worksite. They include the following:

1. OSHA special emphasis program on a particular safety issue.
2. A complaint lodged to OSHA by a current employee, former employee or a member of the public.
3. A reportable incident such as a fatality, in-patient hospitalization, loss of an eye or amputation.
4. A random inspection.

What to Expect from an OSHA or TOSHA Compliance Visit

- Visit will be unannounced
- An opening conference to outline the purpose and expectations (scope/warrant)
- “Walkaround” Inspection (“Plain View”)
 - Environmental samples, photos and videos of the worksite
- Inspection of records related to your safety and health programs



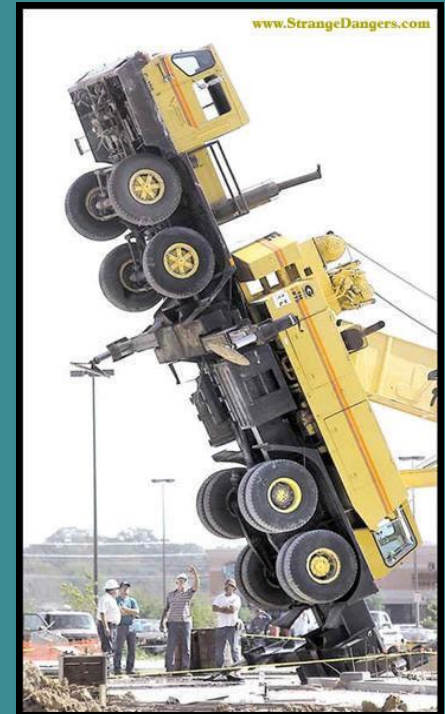
What to Expect from an OSHA or TOSHA Compliance Visit (...cont.)

- Formal and informal (5 minute) interviews (hourly v. manager)
- Including employee knowledge of health and safety standards and Programs (walk-up to random employees!)
- Warnings about non-compliance
- Potential citations for violations of OSHA/TOSHA standards
- Follow-up inspections to assess any Abatement orders



Employer's Rights During an OSHA/TOSHA Inspection

- Request identification from Compliance Officers
- Request an inspection warrant or agree on scope - - No Trespassing - -
- Request the reason for the Compliance Officer's visit
- Request an informal conference after the citation (if any) is received
- Request assurance of the confidentiality of trade secrets and mark applicable documents provided to inspector as Proprietary-Confidential.



RESTRICTED AREA

**VISITORS MUST BE
ACCOMPANIED BY AN
AUTHORIZED MANAGERIAL
COMPANY REPRESENTATIVE**

NO TRESPASSING

OSHA'S Typical Top 10 Citation List Highlights

1. Fall Protection
2. Hazard Communication
3. Scaffolding
4. Respiratory Protection
5. Lockout/Tagout
6. Powered Industrial Trucks
7. Electrical – Wiring Methods
8. Ladders
9. Machine Guarding
10. Electrical, General Requirements

Most frequently cited violations:

OSHA's 2015 TOP TEN Most Frequently Cited Violations

1.	Fall protection (C)	6.	Powered Industrial Trucks
2.	Hazard Communication	7.	Electrical – Wiring Methods
3.	Scaffolding (C)	8.	Ladders (C)
4.	Respiratory Protection	9.	Machine Guarding
5.	Lockout/tagout	10.	Electrical – General Requirements

C = Construction Standard



Most Severe Violations

- Willful: Intentional knowing, voluntary disregard, or indifference to worker safety
- Repeat: Employers who were previously cited for the same/similar violations
- Serious: Substantial probability that death or serious injury could result from a hazard that the employer knew or should have known
- Failure-to-Abate: Failure to correct a prior violation after the abatement period expired



OSHA's Severe Violator Enforcement Program



- OSHA's toughest regulations for non-compliant employers
- Penalties may range from \$7,000 to \$70,000 for **EACH** violation
- Willful violations may be punishable by imprisonment

Written Workplace Safety Plans*

- Bloodborne Pathogens
- Confined Space
- Emergency Action
- Fall Protection
- Fire Safety
- Forklift Safety
- General Safety
- Hazard Communication
- Hearing Conservation
- Lockout/Tagout
- Respiratory Protection
- Workplace Security

ALSO... WORKSITE-SPECIFIC HAZARD ASSESSMENTS!!!

* This is a list of the most common plans. It is not intended to cover all possible plans.

OSHA Matters May Give Way to Criminal Liability

- The Department of Justice's "Worker Endangerment Initiative" significantly expands the potential for criminal liability in OSHA cases.



"On an average day in America, 13 workers die on the job, thousands are injured and 150 succumb to diseases they obtained from exposure to carcinogens and other toxic and hazardous substances while they worked. **Given the troubling statistics on workplace deaths and injuries, the Department of Justice is redoubling its efforts to hold accountable those who unlawfully jeopardize workers' health and safety.**"

--Deputy Attorney General Sally Quillian Yates
<https://www.justice.gov/enrd/worker-endangerment>

Managers May Face Personal Liability and Criminal Prosecution

2 supervisors to pay \$450K in decapitation of 2 workers

Two former supervisors have agreed to pay \$450K to the families of two workers who were decapitated in a boiler explosion. If they don't pay within a year's time, they're going to jail.

Former plant manager Carl Richardson and former maintenance supervisor Roy Faulkinbury both pleaded no contest to two felony charges in connection with the March 19, 2009, explosion at Solus Industrial Innovations, a plastics manufacturer in Rancho Santa Margarita, CA.

The explosion killed Jose Jimenez, 51, and Isidro Echeverria, 34. Two other employees were injured. Echeverria's body was found by his brother who also worked at the plant. The blast also blew the roof off the building. The plant never re-opened.

The Orange County District Attorney's Office says the boiler blew up because the company had been trying to save money. As a result, it paid a high cost (loss of employee lives) due to a lack of safety.

In 2007, Solus relocated from Pennsylvania to California. The DA's office says the company intentionally discarded a commercial boiler to avoid the cost and permitting requirements of proper installation.

According to grand jury testimony, the two supervisors decided not to use a commercial boiler because it would require a gas line. Instead, they bought a \$500 residential water heater from a consumer hardware store. The water heater was used to melt plastic as part of Solus' manufacturing process.

The DA's office says the overworked water heater developed problems, including leaks and a blown pressure relief valve. The prosecutors say despite those problems, plant supervisors never got the heater fixed or inspected and instead had employees try to keep it running.

Prosecutors have agreed that if Richardson and Faulkinbury pay the victims' families within 90 days and perform one-third of their community service within a year, a judge will reduce their charges to misdemeanors and sentence them to probation.

If they don't comply, they will be sentenced to three months in jail.

The DA's office also filed a civil lawsuit against Solus, saying the company knowingly maintained an unsafe work environment that resulted in the two deaths. That case is still pending.

The civil lawsuit seeks penalties and restitution in an amount to be determined at trial.

Lying to OSHA Inspector Can Result in Criminal Charges

- UP TO 25 YEARS IMPRISONMENT!
- In 2013, while an Alabama roofing contractor was working on a project, three employees sustained serious injuries.
- When OSHA inspectors investigated the accident scene, the contractor told an OSHA inspector that he had been present on the job site on the day of the accident and that he had provided the workers with fall protection equipment approximately five days prior to the accident.

Lying to OSHA Inspector (...cont.)

- The contractor had not obtained and provided fall protection equipment to employees until five days after the accident, coincidentally the same day that the OSHA inspectors initiated their investigation.
- On April 6, 2015, the DOJ charged the contractor with making false statements and lying to OSHA inspectors in connection with their investigation. Ultimately, the contractor pleaded guilty to one count of making false statements to an OSHA inspector. He was sentenced to three years of supervised probation and 30 hours of community service.



The photos of Charles C. Ebbets, shot on the construction of GE Building, 1932

OSHA HOT TOPICS

**These new initiatives
can get you in trouble if
you are not prepared!**

Updates to OSHA's Recordkeeping Rule

The Occupational Safety and Health Administration's Revised Recordkeeping Rule includes two key changes:

- **First**, the rule updates the list of industries that are exempt from the requirement to routinely keep OSHA injury and illness records, due to relatively low occupational injury and illness rates. The previous list of industries was based on the old Standard Industrial Classification (SIC) system and injury and illness data from the Bureau of Labor Statistics (BLS) from 1996, 1997, and 1998. The new list of industries that are exempt from routinely keeping OSHA injury and illness records is based on the North American Industry Classification System (NAICS) and injury and illness data from the Bureau of Labor Statistics (BLS) from 2007, 2008, and 2009. Note: The new rule retains the exemption for any employer with ten or fewer employees, regardless of their industry classification, from the requirement to routinely keep records.
- **Second**, the rule expands the list of severe work-related injuries that all covered employers **must report** to OSHA. The revised rule retains the current requirement to report all work-related fatalities within 8 hours and adds the requirement to report all work-related in-patient hospitalizations, amputations and loss of an eye within 24 hours to OSHA.

Changes to recordkeeping requirements: Who is required to keep records? Who is exempt from keeping records?

- OSHA regulations require certain employers to routinely keep records of serious employee injuries and illnesses. However, there are two classes of employers that are partially exempt from routinely keeping records.
- First, employers with ten or fewer employees at all times during the previous calendar year are exempt from routinely keeping OSHA injury and illness records. **OSHA's revised recordkeeping regulation maintains this exemption.**

Changes to recordkeeping requirements: Who is required to keep records? Who is exempt from keeping records? (...cont.)

- Second, establishments in certain low-hazard industries are also exempt from routinely keeping OSHA injury and illness records. Since 1982, this list has been comprised of establishments in the divisions of retail trade; finance, insurance and real estate; and the service industry if the three year average lost workday case rate for their major industry group was 75 percent or less of the overall three year average of the lost workday case rate for private industry. OSHA's revised recordkeeping regulation provides an updated list of low-hazard industries that are exempt from routinely keeping OSHA injury and illness records. The new list of exempt industries is now classified by North American Industry Classification System (NAICS), which is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing and publishing statistical data related to the U.S. business economy. The injury and illness rate threshold is based on more recent BLS data.

Starting on January 1, 2015, the following NAIICS entities will be partially exempt from OSHA recordkeeping requirements.

Non-Mandatory Appendix A to Subpart B -- Partially Exempt Industries

Employers are not required to keep OSHA injury and illness records for any establishment classified in the following North American Industry Classification System (NAICS), unless they are asked in writing to do so by OSHA, the Bureau of Labor Statistics (BLS), or a state agency operating under the authority of OSHA or the BLS. All employers, including those partially exempted by reason of company size or industry classification, must report to OSHA any workplace incident that results in a fatality, in-patient hospitalization, amputation, or loss of an eye (see §1904.39).

Industries That Include Establishments that Would Be Newly Required to Keep Records

NAICS CODE	Title of NAICS Code
3118	Bakeries and tortilla manufacturing
4411	Automobile dealers
4413	Automotive parts, accessories, and tire stores
4441	Building material and supplies dealers
4452	Specialty food stores
4453	Beer, wine, and liquor stores
4539	Other miscellaneous store retailers
4543	Direct selling establishments
5311	Lessors of real estate
5313	Activities related to real estate
5322	Consumer goods rental
5324	Commercial and industrial machinery and equipment rental and leasing
5419	Other professional, scientific, and technical services
5612	Facilities support services
5617	Services to buildings and dwellings

Industries That Include Establishments that Would Be Newly Required to Keep Records (...cont.)

NAICS CODE	Title of NAICS Code
5619	Other support services
6219	Other ambulatory health care services
6241	Individual and family services
6242	Community food and housing, and emergency and other relief services
7111	Performing arts companies
7113	Promoters of performing arts, sports, and similar events
7121	Museums, historical sites, and similar institutions
7139	Other amusement and recreation industries
7223	Special food services
8129	Other personal services

Fatalities and Certain Injuries

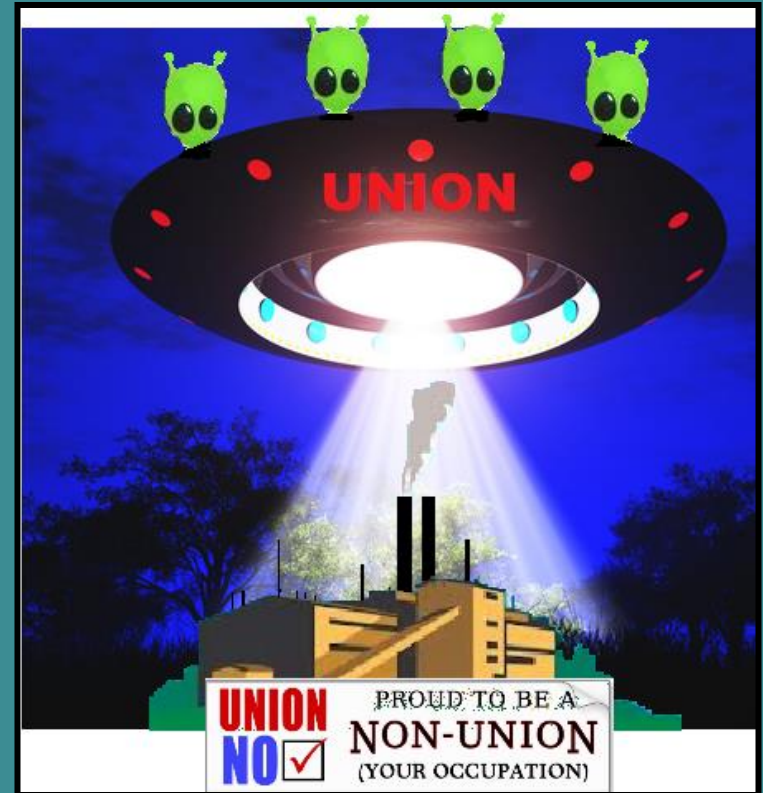
OSHA's Expanding Grasp: Reporting Requirements After January 1, 2015

- Until recently, employers only had to report within 8 hours fatalities and in-patient hospitalizations involving three or more employees. Not anymore.
- As of January 1, 2015, a new OSHA rule expands the employer's reporting obligation considerably.
- Now, employers have 8 hours to report fatalities and 24 hours to report any event that results in amputation, loss of an eye, or even a single in-patient hospitalization.
- The new rule applies even if the workplace incident involves less than three employees and does not result in death.
- To keep up with what will be a significant increase in reports, OSHA is developing a website that allows employees to give notice online:
https://www.osha.gov/report_online/

Labor Unions at Non-Union Facilities?

OSHA issued a letter of interpretation (2/21/2013):

- Non-union employees can designate a 3rd party of their **choice** for **walk-around inspections...**
- Including a labor union representative



Labor Unions at Non-Union Facilities? (...cont.)

- Major change in OSHA policy
- Potential outcomes are cause for concern
- OSHA has given unions a *new organizing tool*



Labor Unions at Non-Union Facilities? (...cont.)

Scenario:

- Union-friendly employees file a complaint with OSHA with the intent to cause an inspection
- Now, OSHA will allow the employees to request a union rep to participate in the actual walk-around inspection



Whistleblower Complaints

Whistleblowers can now file complaints online with OSHA

Agency launches online form to provide workers a new way to file retaliation complaints

Whistleblowers covered by one of 22 statutes administered by the U.S. Department of Labor's Occupational Safety and Health Administration will now be able to file complaints online. The online form will provide workers who have been retaliated against an additional way to reach out for OSHA assistance online.

"The ability of workers to speak out and exercise their rights without fear of retaliation provides the backbone for some of American workers' most essential protections," said Assistant Secretary of Labor for Occupational Safety and Health Dr. David Michaels. "Whistleblower laws protect not only workers, but also the public at large and now workers will have an additional avenue available to file a complaint with OSHA."

Currently, workers can make complaints to OSHA by filing a written complaint or by calling the agency's 1-800-321-OSHA (6742) number or an OSHA regional or area office. Workers will now be able to electronically submit a whistleblower complaint to OSHA by visiting www.osha.gov/whistleblower/WBComplaint.html.

The new online form prompts the worker to include basic whistleblower complaint information so they can be easily contacted for follow-up. Complaints are automatically routed to the appropriate regional whistleblower investigators. In addition, the complaint form can also be downloaded and submitted to the agency in hard-copy format by fax, mail or hand-delivery. The paper version is identical to the electronic version and requests the same information necessary to initiate a whistleblower investigation.

Whistleblower Complaints (...cont.)

OSHA enforces the whistleblower provisions of 22 statutes protecting employees who report violations of various securities laws, trucking, airline, nuclear power, pipeline, environmental, rail, public transportation, workplace safety and health, and consumer protection laws. Detailed information on employee whistleblower rights, including fact sheets and instructions on how to submit the form in hard-copy format, is available online at www.whistleblowers.gov.

Whistleblower Complaints (...cont.)

OSHA ONLINE WHISTLEBLOWER COMPLAINT FORM

Notice of Whistleblower Complaint

EMERGENCY NOTICE: Do Not Report an Emergency Using this Form or Email!

To report an emergency, fatality, or imminent life threatening situation please contact our toll free number immediately:

1-800-321-OSHA (6742)

TTY 1-877-889-5627

Please fill out sections 1 through 30, but [READ THIS](#) first. Items noted with an asterisk (*) are required in order to accept your submission.



US Department of Labor
Occupational Safety and Health Administration
Notice of Whistleblower Complaint

OMB # 1218-0236

PART 1 - EMPLOYEE INFORMATION

*Required fields denoted by **

1. Name*: First Name M.I. Last Name

2. Present Address:

Street*:

City*:

State *: Select one...

Zip*: #####

3. Telephone Numbers*: (at least one required)

Home: (###) ###-####

Work: (###) ###-#### Ext

Cell: (###) ###-####

4. Email Address:

Whistleblower Complaints (...cont.)

Whistleblower Statutes - Filing Time Limits

Environmental and Nuclear Safety Laws	Days to File
Section 11(c) of the Occupational Safety & Health Act (OSHA). [29 U.S.C. §660(c)] Section 11(c) provides protection for employees who exercise a variety of rights guaranteed under the Act, such as filing a safety and health complaint with OSHA, participating in an inspection, etc. 29 CFR 1977	30
Asbestos Hazard Emergency Response Act (AHERA). [15 U.S.C. §2651] Protects employees who report violations of the law relating to asbestos in public or private non-profit elementary and secondary school systems. 29 CFR 1977	90
Clean Air Act (CAA). [42 U.S.C. §7622] Prohibits retaliation against any employee who reports violations regarding air emissions from area, stationary, and mobile sources. 29 CFR 24	30
Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). [42 U.S.C. §9610] a.k.a. "Superfund," prohibits retaliation against any employee who reports alleged violations relating to cleanup of hazardous waste sites, as well as accidents, spills, and other emergency releases of pollutants and contaminants. 29 CFR 24	30
Energy Reorganization Act (ERA). [42 U.S.C. §5851] Prohibits retaliation against any employee who reports violations or refuses to engage in violations of the ERA or the Atomic Energy Act. Protected employees include employees of operators, contractors and subcontractors of nuclear power plants licensed by the Nuclear Regulatory Commission, and employees of contractors working with the Department of Energy under a contract pursuant to the Atomic Energy Act. 29 CFR 24	180
Federal Water Pollution Control Act (FWPCA). [33 U.S.C. §1367] a.k.a. "Clean Water Act," prohibits retaliation against any employee who reports alleged violations relating to discharge of pollutants into water. 29 CFR 24	30
Safe Drinking Water Act (SDWA.) [42 U. S. C. §300j-9(i)] Prohibits retaliation against any employee who reports alleged violations relating to any waters actually or potentially designated for drinking. 29 CFR 24	30
Solid Waste Disposal Act (SWDA). [42 U.S.C. §6971] Prohibits retaliation against any employee who reports alleged violations relating to the disposal of solid and hazardous waste (including medical waste) at active and future facilities. This statute is also known as the Resource Conservation and Recovery Act. 29 CFR 24	30
Toxic Substances Control Act (TSCA). [15 U.S.C. §2622] Prohibits retaliation against any employee who reports alleged violations relating to industrial chemicals produced or imported into the United States, and supplements the Clean Air Act (CAA) and the Toxic Release Inventory under Emergency Planning & Community Right to Know Act (EPCRA). 29 CFR 24	30

Whistleblower Complaints (...cont.)

Transportation Industry Laws	Days to File
Federal Railroad Safety Act (FRSA). [49 U.S.C §20109] Protects employees of railroad carriers and their contractors and subcontractors who report a hazardous safety or security condition, a violation of any federal law or regulation relating to railroad safety or security, or the abuse of public funds appropriated for railroad safety. In addition, the statute protects employees who refuse to work when confronted by a hazardous safety or security condition. 29 CFR 1982	180
International Safe Container Act (ISCA) [46 U.S.C. §80507] Protects employees involved in international shipping who report to the Coast Guard the existence of an unsafe intermodal cargo container or another violation of the Act. 29 CFR 1977	60
Moving Ahead for Progress in the 21st Century Act (MAP-21). [49 U.S.C. §30171] Prohibits retaliation by motor vehicle manufacturers, part suppliers, and dealerships against employees for providing information to the employer or the U.S. Department of Transportation about motor vehicle defects, noncompliance, or violations of the notification or reporting requirements enforced by the National Highway Traffic Safety Administration or for engaging in related protected activities as set forth in the provision.	180
National Transit Systems Security Act (NTSSA). [6 U.S.C. §1142] Protects transit employees who report a hazardous safety or security condition, a violation of any federal law relating to public transportation agency safety, or the abuse of federal grants or other public funds appropriated for public transportation. The Act also protects public transit employees who refuse to work when confronted by a hazardous safety or security condition or refuse to violate a federal law related to public transportation safety. 29 CFR 1982	180
Pipeline Safety Improvement Act (PSIA). [49 U.S.C. §60129] Protects employees who report violations of federal laws related to pipeline safety and security or who refuse to violate such laws. 29 CFR 1981	180
Seaman's Protection Act, 46 U.S.C. §2114 (SPA), as amended by §611 of the Coast Guard Authorization Act of 2010, Public Law 111-281. Protects employees who report to the Coast Guard or another federal agency a violation of a maritime safety law or regulation. The Act also protects seamen who refuse to work when they reasonably believe an assigned task would result in serious injury or impairment of health to themselves, other seamen, or the public.	180
Surface Transportation Assistance Act (STAA). [49 U.S.C §31105] Protects truck drivers and other employees who refuse to violate regulations related to the safety of commercial motor vehicles or who report violations of those regulations. 29 CFR 1978	180
Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR21). [49 U.S.C. §42121] Protects employees of air carriers and contractors and subcontractors of air carriers who, among other things, report violations of laws related to aviation safety. 29 CFR 1979	90

Whistleblower Complaints (...cont.)

Consumer and Investor Protection Laws	Days to File
Affordable Care Act. 29 U.S.C. §218C (ACA) Protects employees who report violations of any provision of title I of the ACA, including but not limited to discrimination based on an individual's receipt of health insurance subsidies, the denial of coverage based on a preexisting condition, or an insurer's failure to rebate a portion of an excess premium.	180
Consumer Financial Protection Act (CFPA). [12 U.S.C. §5567]. Employees are protected for blowing the whistle on reasonably perceived violations of any provision of the Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act or any other provision of law that is subject to the jurisdiction of the Bureau of Consumer Financial, Protection, or any rule, order, standard, or prohibition prescribed by the Bureau.	180
Sarbanes-Oxley Act (SOX). [18 U.S.C. §1514A] Protects employees of certain companies who report alleged mail, wire, bank or securities fraud; violations of the SEC rules and regulations; or violation of federal laws related to fraud against shareholders. The Act covers employees of publicly traded companies and their subsidiaries, as well as employees of nationally-recognized statistical rating organizations. 29 CFR 1980	180
Consumer Product Safety Improvement Act (CPSIA). [15 U.S.C. §2087] Protects employees who report to their employer, the federal government, or a state attorney general reasonably perceived violations of any statute or regulation within the jurisdiction of the Consumer Safety Product Safety Commission (CPSC). CPSIA covers employees of consumer product manufacturers, importers, distributors, retailers, and private labelers. 29 CFR 1983	180
FDA Food Safety Modernization Act (FSMA) [21 U.S.C. 399d]. Protects employees of food manufacturers, distributors, packers, and transporters from reporting a violation of the Food, Drug, and Cosmetic Act, or a regulation promulgated under the Act. Employees are also protected from retaliation for refusing to participate in a practice that violates the Act.	180

Proposed Mandatory Reporting of Injuries and Illnesses

FIND AND FIX

Nov. 7, 2013

OSHA announces proposed new rule to improve tracking of workplace injuries and illnesses

WASHINGTON – The Occupational Safety and Health Administration today issued a proposed rule to improve workplace safety and health through improved tracking of workplace injuries and illnesses. The announcement follows the Bureau of Labor Statistics' release of its annual Occupational Injuries and Illnesses report, which estimates that three million workers were injured on the job in 2012.

"Three million injuries are three million too many," said Assistant Secretary of Labor for Occupational Safety and Health Dr. David Michaels. "With the changes being proposed in this rule, employers, employees, the government and researchers will have better access to data that will encourage earlier abatement of hazards and result in improved programs to reduce workplace hazards and prevent injuries, illnesses and fatalities. The proposal does not add any new requirement to keep records; it only modifies an employer's obligation to transmit these records to OSHA."

OSHA is proposing to amend its current recordkeeping regulations to add requirements for the electronic submission of injury and illness information employers are already required to keep under existing standards, Part 1904. The first proposed new requirement is for establishments with more than 250 employees (and who are already required to keep records) to electronically submit the records on a quarterly basis to OSHA.

OSHA is also proposing that establishments with 20 or more employees, in certain industries with high injury and illness rates, be required to submit electronically only their summary of work-related injuries and illnesses to OSHA once a year. Currently, many such firms report this information to OSHA under OSHA's Data Initiative.

OSHA plans to eventually post the data online, as encouraged by President Obama's Open Government Initiative. Timely, establishment-specific injury and illness data will help OSHA target its compliance assistance and enforcement resources more effectively by identifying workplaces where workers are at greater risk, and enable employers to compare their injury rates with others in the same industry.

“Right to Understand”

New Hazard Communication Standard

“Globally Harmonized System”

- Right to Know vs. Right to Understand
 - Current standard – “right to know”
 - provides guidance for defining hazards and performing hazard determinations

“Globally Harmonized System” (...cont.)

- Greatest impact on U.S. based chemical manufacturers and chemical importers, with few mandatory changes slated for other general chemical storage.
- HCS targets chemical manufacturers and importers to ensure their chemical containers will display a label similar to those now used in Europe.
- The GHS-inspired standards will require chemical manufacturers and importers to label chemical containers with 1) a harmonized signal word, 2) GHS pictogram(s), 3) a hazard statement for each hazard class and category, and 4) a precautionary statement.

“Globally Harmonized System” (...cont.)

- A harmonized signal word is used to indicate the relative level of severity of hazard and alert the reader to a potential hazard on the label. The signal words are “danger,” used for the more severe hazards, and “warning,” which is used for less severe hazards.
- The GHS pictogram is a symbol plus other graphic elements, such as a border, background pattern or color that is intended to convey specific information about the hazards of a chemical. Each pictogram consists of a different symbol on a white background within a red square frame set on a point (i.e., a red diamond).
- A hazard statement is assigned to a hazard class and category to describe the nature of the hazard(s) of a chemical, including, where appropriate, the degree of hazard.

“Globally Harmonized System” (...cont.)

- A precautionary statement is a phrase that describes recommended measures to minimize or prevent adverse effects resulting from exposure to or improper storage or handling of a hazardous chemical.
- The newly revised HCS outlines eight specific GHS pictograms for use on labels. Each is surrounded by a red border and designed to convey the health and physical hazards of chemicals. A ninth, environmental pictogram may be required by other agencies, but not by OSHA. Environmental hazards are not within OSHA’s jurisdiction.

“Globally Harmonized System” (...cont.)

- **TIMELINE**

- December 1, 2013: Employers must train employees on the new label elements and MSDS format.
- June 1, 2015: Chemical manufacturers, importers, distributors, and employers must comply with all modified provision of this final rule (exception that distributors may ship products labeled by manufacturers under the old system until December 1, 2015).
- June 1, 2016 (or 2015 – IF YOU ASK CSHO's!!): Employers must update alternative workplace labeling and hazard communication program as necessary and provide employee training for newly identified physical or health hazards.
- Transition period: Chemical manufacturers, importers, distributors, and employers must comply with the final standard, the current standard, or both.

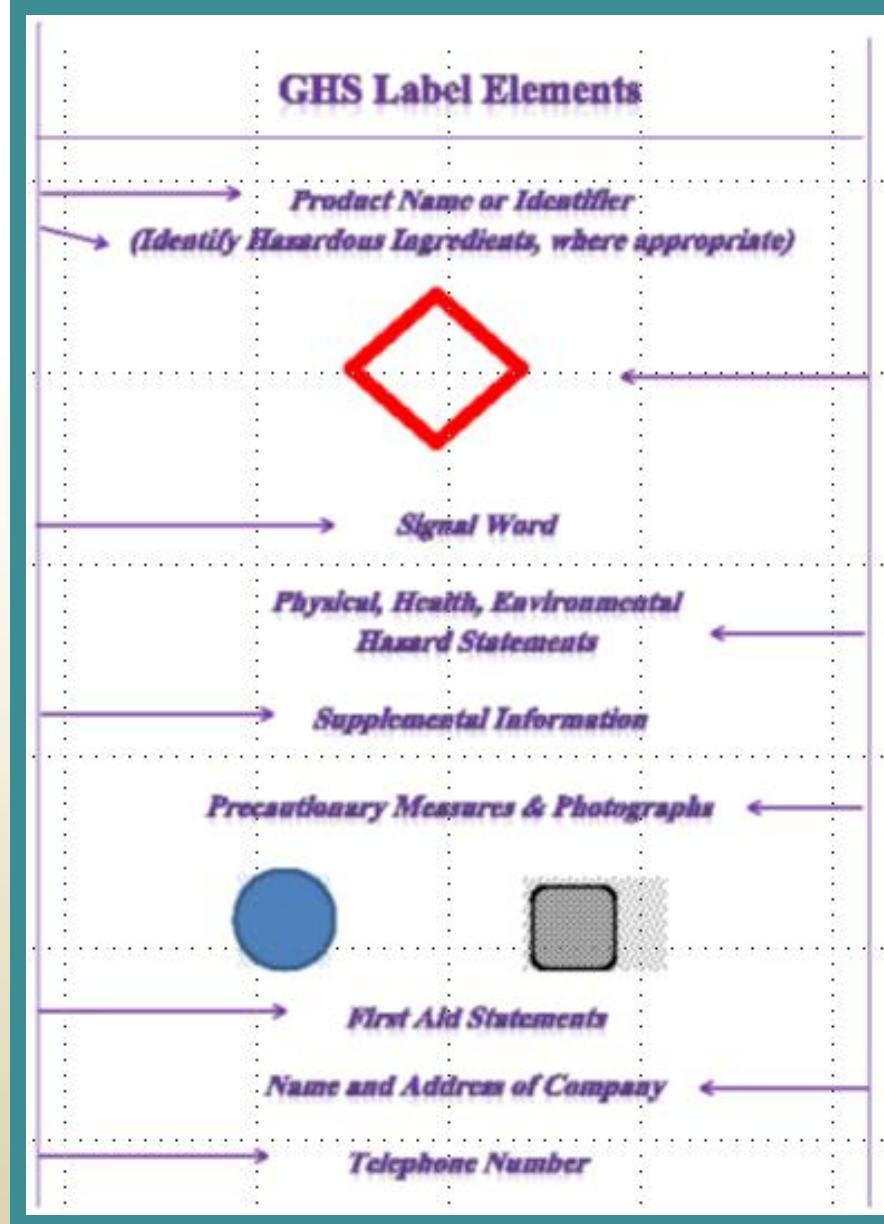






Figure 4.11

ACUTE ORAL TOXICITY - Annex 1

	Category 1	Category 2	Category 3	Category 4	Category 5
LD ₅₀	£ 5 mg/kg	> 5 < 50 mg/kg	³ 50 < 300 mg/kg	³ 300 < 2000 mg/kg	³ 2000 < 5000 mg/kg
Pictogram					No symbol
Signal word	Danger	Danger	Danger	Warning	Warning
Hazard statement	Fatal if swallowed	Fatal if swallowed	Toxic if swallowed	Harmful if swallowed	May be harmful if swallowed

Other GHS label elements include:

- **Precautionary Statements and Pictograms:** Measures to minimize or prevent adverse effects.
- **Product Identifier (ingredient disclosure):** Name or number used for a hazardous product on a label or in the SDS.
- **Supplier Identification:** The name, address and telephone number should be provided on the label.
- **Supplemental Information:** Non-harmonized information.

Safety Incentives and Incentive Programs May Be Illegal

Disincentives

Section 11(c) of the Occupational Safety and Health Act: Prohibits an employer from discriminating against an employee because the employee reports an injury or illness.

Disincentives (...cont.)

OSHA's Position:

Your incentive program might not pass OSHA's "sniff test" if the incentive involved is of sufficient magnitude that failure to receive it might have dissuaded reasonable workers from reporting.

Disincentives (...cont.)

- If employees do not feel free to report injuries → entire workforce is at risk
- Certain workplace policies could violate the Act by discouraging reporting

Disincentives (...cont.)

- One such questionable policy: Employer Safety Programs
 - Programs that provide employees an incentive to not report injuries
 - Examples: awarding bonuses to employees that have “not” been injured



Disincentives (...cont.)

OSHA identifies the following as policies and practices employers need to change:

- Employers who have a policy of taking disciplinary action against employees who are injured on the job, regardless of the circumstances, OSHA views discipline imposed under such a policy against an employee who reports an injury as a direct violation of Section 11(c) of FRSA.
- An employee who reports an injury or illness is disciplined. Because the act of reporting the injury directly results in discipline, there is a clear potential for violating Section 11(c) of FRSA. The rules cannot penalize workers who do not realize immediately that their injuries are serious enough to report, or even that they are injured at all.

Disincentives (...cont.)

- OSHA encourages employers to maintain and enforce legitimate workplace safety rules in order to eliminate or reduce workplace hazards and prevent injuries from occurring in the first place. An employer should not, however, attempt to use a work rule as a pretext for discrimination against a worker who reports an injury.
- Some employers establish programs that unintentionally or intentionally provide employees an incentive to not report injuries. For example, an employer might enter all employees who have not been injured in the previous year in a drawing to win a prize, or a team of employees might be awarded a bonus if no one from the team is injured over some period of time. There are better ways to encourage safe work practices, incentives that promote worker participation in safety-related activities such as identifying hazards or participating in investigations of injuries, incidents or near misses.

Disincentives (...cont.)

- Better ways to encourage safe work practices:
 - Incentives that promote worker participation in safety related activities
 - Providing t-shirt to workers serving on safety and health committees
 - Offering modest rewards for suggesting ways to strengthen health and safety compliance

Three Things to Know About OSHA's New Rule for Confined Space Entry

- In order to protect construction employees who are working in confined spaces, OSHA issued Subpart AA of 29 CFR 1926.**

OSHA's New Rule for Confined Space Entry (...cont.)

Characteristics of Confined Spaces

- According to OSHA, there are three characteristics of confined spaces:
 - It is big enough for a person to fit his or her entire body.
 - It is restrictive for the person when he or she is entering and exiting.
 - The space is not meant for someone to stay in for a long period of time.

OSHA's New Rule for Confined Space Entry (...cont.)

Requirements for Confined Spaces

- As an employer on a construction site with a permit-required confined space, you must comply with various safety requirements. The list of must-haves at work includes:
 - Danger and warning signs that alert workers about the permit-required confined space (PRCS).
 - A program detailing the PRCS.
 - Permits for safe entry operations, which also feature atmospheric test results.
 - Certified documents detailing alternative entry procedures and safety methods for workers in the PRCS.

OSHA's New Rule for Confined Space Entry (...cont.)

- A professional engineer's written approval to ensure that employees know the provisions and limitations of using specifically designed personnel hoisting systems.
- Safety data sheets (or something along those lines) for workers who are exposed in the PRCs.
- Employee training records to confirm that they've completed confined space training requirements

OSHA's New Rule for Confined Space Entry (...cont.)

Training for the New OSHA Rule

- The new rule went into effect on August 3, 2015
- Provide a safety training course that meets OSHA requirements. Employees must be trained before they step foot on a job site.
- All employees – including entry attendants, entry workers and emergency response personnel – must complete the training prior to performing any work-related task.

NEW CONFINED SPACES STANDARD FOR CONSTRUCTION

The new confined space standard for construction becomes effective August, 2015.

WHAT IS A CONFINED SPACE?

A confined space has NO permits required if it's just a confined space:

- Limited means of entry and/or exit,
- Is large enough for a worker to enter it, and
- Is not intended for regular/continuous occupancy.

Examples include sewers, pits, crawl spaces, attics and boilers.

WHAT IS A PERMIT REQUIRED CONFINED SPACE?

You must fill out the permit and have an attendant (hole watch) for these.

A permit space is a confined space that may have a hazardous atmosphere, engulfment hazard, or other serious hazard, such as exposed wiring, that can interfere with a worker's ability to leave the space without assistance.

HERE ARE SOME OF THE KEY ELEMENTS OF THE CONSTRUCTION STANDARD:

1. You will have to have a written program, including entry permits;
2. How do I know whether to follow the general industry or construction confined space standard?

If you are doing construction work - such as building a new structure or upgrading an old one - then you must follow the construction confined space standard.

3. I've been following the general industry standard. What is new or different about the construction standard?

THE FIVE NEW REQUIREMENTS INCLUDE:

1. *More detailed provisions requiring coordinated activities when there are multiple employers at the worksite. This will ensure hazards are not introduced into a confined space by workers performing tasks outside the space. An example would be a generator running near the entrance of a confined space causing a buildup of carbon monoxide within the space.*



THE FIVE NEW REQUIREMENTS INCLUDE:

2. *Requiring a competent person to evaluate the worksite and to identify confined spaces, including permit spaces.*
3. *Requiring continuous atmospheric monitoring whenever possible.*
4. *Requiring continuous monitoring of engulfment hazards. For example, when workers are performing work in a storm sewer, a storm upstream from the workers could cause flash flooding. An electronic sensor or observer posted upstream from the worksite could alert workers in the space at the first sign of the hazard, giving the workers time to evacuate the space safely.*
5. *Allowing for the suspension of a permit, instead of cancellation, in the event of changes from the entry conditions list on the permit or an unexpected event requiring evacuation of the space. The space must be returned to the entry conditions listed on the permit before re-entry.*

CLARIFICATIONS TO GENERAL INDUSTRY STANDARD

OSHA has added provisions clarifying existing requirements in the General Industry standard. These include:

- Requiring that employers who direct workers to enter a space without using a complete permit system prevent workers' exposure to physical hazards through elimination of the hazard or isolation methods such as lockout/tagout.
- Requiring that employers who are relying on local emergency services for emergency services arrange for responders to give the employer advance notice if they will be unable to respond for a period of time (because they are responding to another emergency, attending department-wide training, etc.).
- Requiring employers to provide training in a language and vocabulary that workers understand.

NEW DEFINITIONS

Several terms have been added to the definitions for the construction standard, such as "entry employer" to describe the employer who directs workers to enter a space, and "entry rescue" added to clarify the differences in the types of rescue employers can use.

COMPARING NEW CONSTRUCTION STANDARD TO THE OLD RULES

How does the new final rule differ from the rules that previously applied to construction work performed in confined spaces?

The new standard requires employers to determine what kinds of spaces their workers are in, what hazards could be there, how those hazards should be made safe, what training workers should receive, and how to rescue those workers if anything goes wrong.

Do employers have to have a written confined space program?

Yes, if workers will enter permit spaces.

WHO IS AFFECTED BY THE NEW CONSTRUCTION STANDARD?

All construction employers whose workers may be exposed to confined space hazards.

MULTI-EMPLOYER WORKSITE ISSUES

Do I need to do anything if there are permit spaces at the worksite, but my employees will not need to enter the permit space?

Yes, you must take effective steps to prevent your employees from entering the space.

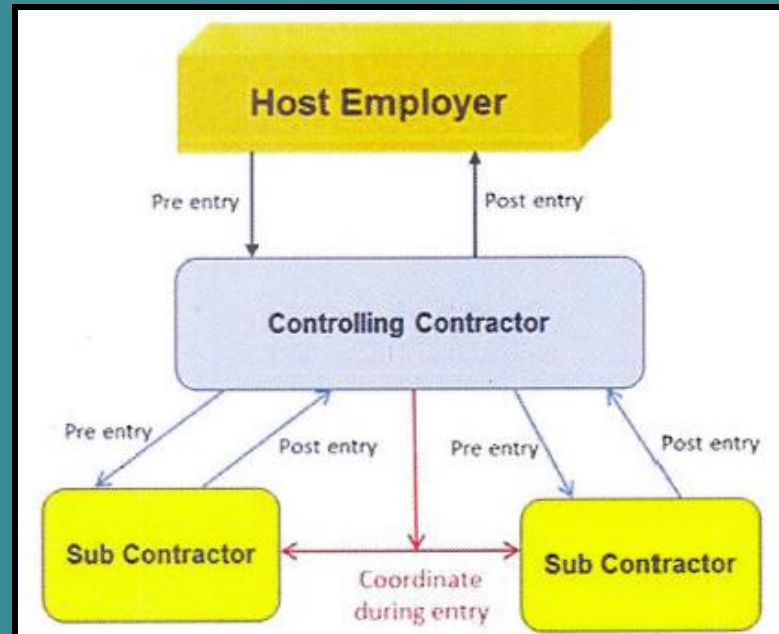
If I hire a contractor (or subcontractor) to do work in a confined space do I have any responsibilities?

Yes, controlling contractors and host employers must discuss spaces on the site and their hazards with entry employers and each other before and after entry.

MULTI-EMPLOYER WORKSITE ISSUES (...cont.)

The required conversations between host employers, controlling contractors, and entry employers are illustrated below.

The diagram shows the information flow and coordination among employers.



MULTI-EMPLOYER WORKSITE ISSUES (...cont.)

The rule makes the controlling contractor, rather than the host employer, the primary point of contact for information about permit spaces at the worksite. The host employer must provide information it has about permit spaces at the worksite to the controlling contractor, who then passes it on to the employers whose employees will enter the spaces (entry employers). Likewise, entry employers must give the controlling contractor information about their entry program and hazards they encounter in the space, and the controlling contractor passes that information on to other entry employers and back to the host. As mentioned above, the controlling contractor is also responsible for making sure employers outside a space know not to create hazards in the space, and that entry employers working in a space at the same time do not create hazards for one another's workers.

If you would like to see the OSHA page with more questions and answers on it here is the link to that website:

<https://www.osha.gov/confinedspaces / faq.html>

Here is the website that OSHA has setup with information and links for the new construction standard on confined spaces:

<https://www.osha.gov/confinedspaces/index.html>

Policy Concerning Controlling Contractors

“Controlling contractor” means: *“a prime contractor, general contractor, construction manager or any other legal entity, which has the overall responsibility for the construction of the project – its planning, quality and completion.”*

Subpart R contains several specific duties that have been placed on the controlling contractor. They include:

1. Ensuring that the steel erector is provided written notification that the footings, piers and walls have sufficient strength to support the loads imposed during the steel erection process [§1926.752(a)];
2. Ensuring that adequate access roads and storage spaces are provided and maintained for the safe delivery, storage and movement of equipment and pedestrians [§1926.752(c)];
3. Providing written notification to the steel erector of any repair, replacement or modification of the anchor bolts prior to erection of a column [§1926.755(b)(2)];

Policy Concerning Controlling Contractors (...cont.)

4. Barring other construction processes below steel erection unless sufficient protection is provided for employees below [§1926.759(b)];
5. Choosing either to accept control and responsibility of certain fall protection measures or having them removed [§1926.760(e)];

The standard placed these duties on the controlling contractor because, as the contractor with general supervisory authority over the worksite, it is in the best position to comply with them. None of these provisions require the controlling contractor to direct the individual employees of a subcontractor or supplier.

Current policy makes clear that the primary responsibility for the safety of construction employees rests with an employee's employer. With respect to the general contractor, however, the policy recognizes an overall responsibility to ensure by the exercise of reasonable oversight that the site is free of hazards. This is but one of the general worksite responsibilities of a general contractor. The policy states that:

The extent of the measures that a controlling employer must implement to satisfy this duty of reasonable care is less than what is required of an employer with respect to protecting its own employees. This means that the controlling employer is not normally required to inspect for hazards as frequently or to have the same level of knowledge of the applicable standards or of trade expertise as the employer it has hired.

Controlling Employer and Multi-Employer Worksites

1. General supervisory authority
 - Power to correct or require others
 - By contract or in practice
2. Reasonable care to prevent and detect
 - Lesser extent than for own employees
 - Less frequent inspections
 - Less knowledge of trade standards

Controlling Contractor

- Factors on how often to inspect:
 - Project scale
 - Nature/pace of work, changing hazards
 - How much known about subcontractor
 - More frequent inspections for unknown or previously non-compliant subcontractor
 - Less frequent inspections for subcontractor with strong safety and health efforts

Controlling Contractor (...cont.)

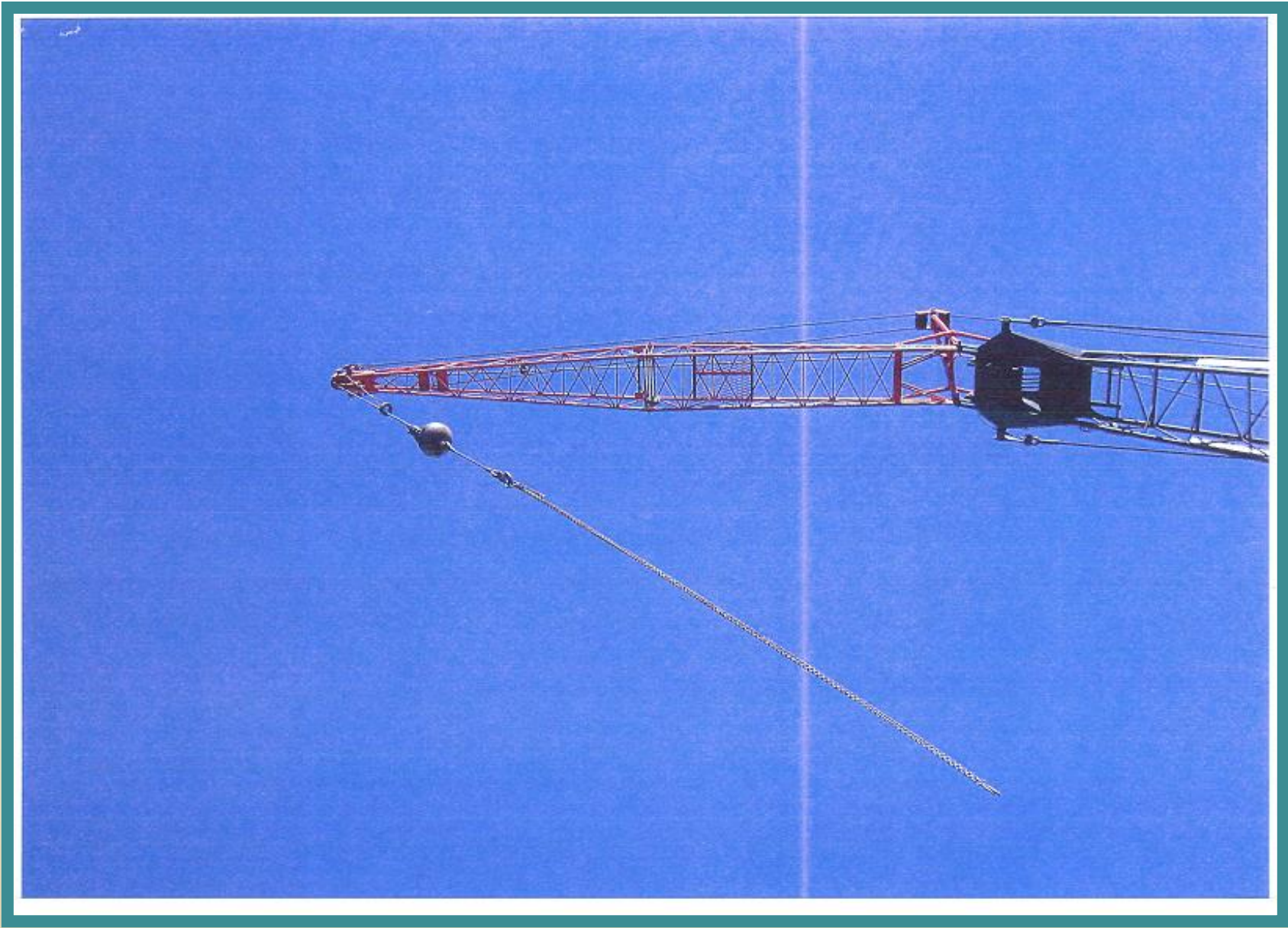
- Factors to evaluate reasonable care:
 - Periodic inspections, frequent enough
 - Effective system to correct hazards
 - Effective, graduated enforcement

Controlling Contractor (...cont.)

- Types of Controlling Employer:
 - Established by Contract
 - Combination of Contract Rights
 - Dispute resolution, schedules, sequencing
 - Architects / Engineers, as above
 - Control without Explicit Contractual Authority

Multi-Employer Worksite Example Bridge Construction Project Steel Erection Duties Obligations of General Contractor to Subcontractor

1. Ensure the steel erector is given written notification that footings, piers and walls have sufficient strength to support loads.
2. Ensure adequate access roads and storage spaces provided for safe movement of equipment and pedestrians.



Steel Erection Duties (...cont.)

3. Provide written notification to steel erector of any repair, replacement or modification of anchor bolts prior to erection of column.
4. Bar other construction processes below steel erection unless sufficient protective measures are taken.
5. Choose either to accept control and responsibility of certain fall protection measures or have them removed.

OSHA Standards Trench Protection 29 CFR Part 1926.650



Yes, It Happens



On March 8, an OSHA inspector ordered a worker out of a trench at a construction site in Mercerville, OH, (above, left) minutes before a portion collapsed (above, right).

Trench Protection Requirements ≥ 5 Feet Deep

- The sides of the trench or excavation must be protected from “cave-in” by one of the following:
 - Sloping (at the appropriate angle for the soil type or 1 1/2 horizontal : 1 vertical);
 - Shoring (normally with metal and hydraulic approved equipment); or
 - Inserting a trench box in the trench;

Fall Protection

29 CFR Part 1910 and Part 1926



Modern-Day Recreation



Fall Protection Requirements

29 CFR Part 1910

- Workers at all worksites must be protected from falls. The first step is identifying the fall hazards on every job. Following identification the hazards must be eliminated and the employees protected. Protection can be provided through the use of various methods and materials, including the following:
 - Guard rail systems
 - Personal fall arrest equipment (body harness, lanyard, etc.)
 - Controlled access zones
 - Safety nets
 - Proper use of ladders

Personal Protective Equipment (PPE)

- Head Protection
- Eye Protection
- Hearing Protection
- Body Protection
- Respiratory Protection



Requirements Based on Type of Work and Hazards

- Employers are required to assess the workplace to determine if hazards that require the use of head, eye, face, hand, or foot protection are present or are likely to be present.
- Examples:
 - PPE – 29 CFR Part 1910.132
 - Respirators – 29 CFR Part 1910.134

Workers' Compensation

- Benefits of a comprehensive safety plan
 1. Fewer workplace injuries
 2. Potential defenses to claims

Certified Drug Free Workplace Program

Failure to follow safety regulations/policies or use safety device

Workplace – Active Shooter Emergency Action

HOW TO RESPOND

WHEN AN ACTIVE SHOOTER IS IN YOUR VICINITY

1. EVACUATE

- Have an escape route and plan in mind
- Leave your belongings behind
- Keep your hands visible

2. HIDE OUT

- Hide in an area out of the shooter's view
- Block entry to your hiding place and lock the doors
- Silence your cell phone and/or pager

3. TAKE ACTION

- As a last resort and only when your life is in imminent danger
- Attempt to incapacitate the shooter
- Act with physical aggression and throw items at the active shooter

**CALL 911 WHEN IT
IS SAFE TO DO SO**

HOW TO RESPOND

WHEN LAW ENFORCEMENT ARRIVES

- Remain calm and follow instructions
- Put down any items in your hands (i.e., bags, jackets)
- Raise hands and spread fingers
- Keep hands visible at all times
- Avoid quick movements toward officers such as holding on to them for safety
- Avoid pointing, screaming or yelling
- Do not stop to ask officers for help or direction when evacuating

INFORMATION

YOU SHOULD PROVIDE TO LAW ENFORCEMENT OR 911 OPERATOR

- Location of the active shooter
- Number of shooters
- Physical description of shooters
- Number and type of weapons held by shooters
- Number of potential victims at the location

Workplace – Active Shooter Emergency Action (...cont.)

COPING

WITH AN ACTIVE SHOOTER SITUATION

- Be aware of your environment and any possible dangers
- Take note of the two nearest exits in any facility you visit
- If you are in an office, stay there and secure the door
- Attempt to take the active shooter down as a last resort

Contact your building management or human resources department for more information and training on active shooter response in your workplace.

**CALL 911 WHEN IT
IS SAFE TO DO SO**

PROFILE

OF AN ACTIVE SHOOTER

An active shooter is an individual actively engaged in killing or attempting to kill people in a confined and populated area, typically through the use of firearms.

CHARACTERISTICS

OF AN ACTIVE SHOOTER SITUATION

- Victims are selected at random
- The event is unpredictable and evolves quickly
- Law enforcement is usually required to end an active shooter situation



Miller & Martin PLLC

Miller & Martin attorneys can work with you to develop plans for health, safety and environmental compliance at your worksites and facilities.

* For attendees at today's Seminar, we will provide the first hour of consultation free of charge.

Mike Mallen

- 20 years of “boots-on-the-ground” experience as in-house counsel and owner and operator of heavy manufacturing businesses
- Assists clients with health, safety and environmental enforcement and regulatory matters at the local, state and federal levels
- Testified before U.S. House of Representatives on environmental regulatory issues



Neil Brunetz

- Bench and jury trial experience on behalf of both plaintiffs and defendants in state courts in Tennessee and Georgia and federal courts as well as a diverse appellate practice. He currently represents banks in Tennessee and Georgia related to loan workouts and collection efforts.
- Represented national bridge and highway construction contractor in OSHA enforcement action related to multiple fall fatalities at an interstate bridge construction site.
- Negotiated OSHA settlement agreement including elimination of "willful" gravity and \$37,000 reduction in citation penalty amount.
- Obtained \$7.2M jury verdict for Plaintiff who sustained spinal cord injury from participating in fraternity sponsored slip-n-slide recruitment event.

